IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 139 OF 2006.

Shri Deus Revolnata Panchista,
Sanvordem Sanguem, Goa,
duly represented by its
Managing Committee :-

1. Shri Bhutnath U.F. Dessai, - President.
2. Shri Raya Krishna dessai _ Secretary.
3. Shri Sadanand Ragu F. Dessai – Treasurer
4. Shri Vishvanath S.F. Dessai – Attorney,
   all of major age, service
   and resident of Xelvona, Quepem, Goa. .... Petitioners.

Versus

1. Shri Bhaurao Vithal Ghaisas,
   (s.d.) through his representatives:-
a) Smt. Sulbha Baurao Ghaisas, widow.
b) Shri Vithaldas Bhaurao Ghaisas,, son.
c) Shri Pushparaj Bhaurao Ghaisas, son.
   d) Shri Laxmiprasad Bhaurao Ghaisas.

2. Shri Vishwas B. Kamat Bambolkar,
   resident of Bagvaddo, Curchorem, Goa. .... Respondents.

Ms. S. Rao, Advocate for the Petitioners.

Mr. J.P. Mulgaonkar, Advocate for the Respondent No.2.

CORAM: V. C. DAGA, J.

DATE: 24th August, 2006.

ORAL JUDGMENT:

Heard rival parties.

2. This petition is directed against the Order dated 10.11.2005 engrafted on the say filed in Regular Civil Suit No. 54/1991, passed by the Civil Judge Jr. Div., Canacona, I/C Sanguem whereby the cross-examination of D.W.5 was closed by the trial Court and the application seeking to recall that witness moved by the petitioner came to be dismissed.

3. Having heard rival parties and examined the affidavit filed by the Advocate for the petitioners in the trial Court, sufficient cause is made out by the petitioners to recall the witness in question. As a matter of fact, it was expected on the part of the trial Court itself to grant opportunity to the petitioners to cross-examine D.W.5. The trial Court was expected to consider the reason disclosed by the Advocate appearing for the petitioners, in its proper perspective. Had the trial Court exercised discretion properly, the litigation before this court could have been avoided.

4. In the result, considering the cause shown, the impugned order closing the further cross-examination of D.W.5 and refusing to recall the said witness is set aside. The trial Court is directed to permit the petitioners to cross-examine D.W.5 with any other witness, if any.

5. In the result, the petition is allowed. Rule is made absolute in

terms of this petition. No order as to costs.

sl. **V. C. DAGA, J.**